

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

JUSTIN JESUS RIVERA,  
Petitioner,  
v.  
CDCR SECRETARY,  
Respondent.

CASE NO. EDCV 22-1157-AB (AS)  
**ORDER OF DISMISSAL**

**I. BACKGROUND**

On July 5, 2022, Justin Jesus Rivera ("Petitioner"), a California state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus ("Petition").<sup>1</sup> (Dkt. No. 1). Petitioner challenges the trial court's calculation of presentence custody credits related to his 2017 guilty pleas to charges of robbery and possession for sale of a controlled substance. (Petition at 2-3).

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<sup>1</sup> Although filed on a form petition created by the state courts, the Court assumes that the Petition was filed pursuant to 28 U.S.C. § 2254.

1 Specifically, it appears Petitioner argues, as he did in the state  
2 courts, that the trial court improperly denied Petitioner pre-  
3 sentencing custody credits pursuant to California Penal Code  
4 section 2900.5.<sup>2</sup> (Petition at 3; see also Petition at 4-5 [stating  
5 claims raised in state court]).  
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8 <sup>2</sup> California Penal Code section 2900.5, effective January 1,  
2017, provides in pertinent part:

9 (a) In all felony and misdemeanor convictions, either by  
10 plea or by verdict, when the defendant has been in  
11 custody, including, but not limited to, any time spent  
12 in a jail, camp, work furlough facility, halfway house,  
13 rehabilitation facility, hospital, prison, juvenile  
14 detention facility, or similar residential institution,  
15 all days of custody of the defendant, including days  
16 served as a condition of probation in compliance with a  
court order, credited to the period of confinement  
pursuant to Section 4019, and days served in home  
detention pursuant to Section 1203.016 or 1203.018, shall  
be credited upon his or her term of imprisonment . . . .

17 (b) For the purposes of this section, credit shall be  
18 given only where the custody to be credited is  
19 attributable to proceedings related to the same conduct  
20 for which the defendant has been convicted. Credit shall  
be given only once for a single period of custody  
attributable to multiple offenses for which a consecutive  
sentence is imposed.

21 (c) For the purposes of this section, "term of  
22 imprisonment" includes any period of imprisonment  
23 imposed as a condition of probation or otherwise ordered  
24 by a court in imposing or suspending the imposition of  
25 any sentence, and also includes any term of imprisonment,  
26 including any period of imprisonment prior to release on  
parole and any period of imprisonment and parole, prior  
to discharge, whether established or fixed by statute,  
by any court, or by any duly authorized administrative  
agency.

27 (d) It is the duty of the court imposing the sentence to  
28 determine the date or dates of any admission to, and  
release from, custody prior to sentencing and the total

1 A Petition for Writ of Habeas Corpus can only be filed by a  
2 petitioner who is in state custody and contends that such custody  
3 is in violation of the Constitution, laws or treaties of the United  
4 States. 28 U.S.C. § 2254(c).

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7 Petitioner's sentencing error claim only involves the  
8 application and/or interpretation of state law and consequently is  
9 not cognizable on federal habeas review. See 28 U.S.C. § 2254(a);  
10 Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) (reiterating that it  
11 is not the province of a federal habeas court to reexamine state  
12 court determinations on state law questions); Smith v. Phillips,  
13 455 U.S. 209, 221 (1982) ("A federally issued writ of habeas corpus,  
14 of course, reaches only convictions obtained in violation of some  
15 provision of the United States Constitution."); Christian v. Rhode,  
16 41 F.3d 461, 469 (9th Cir. 1994); Kennick v. Superior Court, 736  
17 F.2d 1277, 1280 (9th Cir. 1984); see also O'Neal v. Sherman, 2016  
18 WL 1715185, at \*16 (C.D. Cal. Apr. 28, 2016) (claim that state  
19 court miscalculated presentence custody credits not cognizable on  
20 federal habeas corpus); Guerrero v. Holland, 2015 WL 6560524, at  
21 \*3 (C.D. Cal. Aug. 31, 2015) (finding claim regarding the denial  
22 of presentence custody credits pursuant to California Penal Code  
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26 number of days to be credited pursuant to this section.  
27 The total number of days to be credited shall be  
28 contained in the abstract of judgment provided for in  
Section 1213. . . .

1 section 2900.5 not cognizable on federal habeas review); Mason v.  
2 Holt, 2016 WL 6136076, at \*5 (E.D. Cal. Oct. 21, 2016) ("Federal  
3 district courts that have considered the issue have concluded that  
4 the denial of presentence conduct credits under Cal. Penal Code §§  
5 4019 and 2900.5 implicates only state law questions, and therefore  
6 such claims are not cognizable on federal habeas review.").

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9 Petitioner has not transformed his state law sentencing claim  
10 into a cognizable federal constitutional claim with his conclusory  
11 citations to due process under the Fifth and Fourteenth Amendments.  
12 (See Petition at 3). "[Petitioner] may not [] transform a state-  
13 law issue into a federal one merely by asserting a violation of  
14 due process." Langford v. Day, 110 F.3d 1380, 1389 (9th Cir.  
15 1996). This holds true for claims making conclusory assertions of  
16 a due process violation for denying presentence custody credits  
17 pursuant to California Penal Code section 2900.5. See Guerrero v.  
18 Holland, 2015 WL 6560524, at \*3 ("Notwithstanding petitioner's  
19 cursory citations to the Equal Protection and Due Process Clauses,  
20 his allegations do not involve a deprivation of any federally  
21 protected right.").

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25 Because Petitioner does not state a claim for relief under 28  
26 U.S.C. § 2254, dismissal of the Petition is warranted.<sup>3</sup>

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<sup>3</sup> The Court notes that it appears from the face of the Petition  
that it also is untimely under the one-year statute of limitations

II. ORDER

ACCORDINGLY, IT IS ORDERED that the Petition is dismissed without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: September 23, 2022



ANDRÉ BIROTTE JR.  
UNITED STATES DISTRICT JUDGE

Presented by:

/s/

ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE

provided for under 28 U.S.C. § 2244(d)(1). However, because Petitioner is entitled to notice before his Petition is dismissed on the basis of untimeliness, see Day v. McDonough, 547 U.S. 198, 202 (2006) (“[B]efore acting on its own initiative [on the issue of untimeliness], a court must accord the parties fair notice and an opportunity to present their positions.”), the Court does not dismiss on this basis.